

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

LAMAR BLAKE,

Case No. 17-CV-1108 (PJS/DTS)

Petitioner,

v.

ORDER

UNITED STATES OF AMERICA,

Respondent.

Lamar Blake, pro se.

This matter is before the Court on the Report and Recommendation (“R&R”) of Magistrate Judge David T. Schultz. Judge Schultz recommends dismissing petitioner Lamar Blake’s 28 U.S.C. § 2241 petition for lack of jurisdiction. The Court has conducted a de novo review. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). Based on that review, the Court adopts the R&R.

Blake did not object to Judge Schultz’s R&R, but he has moved to supplement his petition.¹ Specifically, Blake seeks to add a claim under *Mathis v. United States*, 136 S. Ct. 2243 (2016), contending that his Guidelines range was incorrectly calculated because he was erroneously subjected to the career-offender enhancement. *Mathis*, however, does not represent a change in the law; instead, “its decision was dictated by decades of prior

¹This is Blake’s second motion to supplement; Judge Schultz recommends granting the first motion.

precedent.” *See United States v. Taylor*, 672 F. App’x 860, 864 (10th Cir. 2016). Nothing prevented Blake from making *Mathis*-type arguments at an earlier stage in his criminal case or as part of his motion under 28 U.S.C. § 2255. Because Blake’s proposed supplement does not establish that his remedy under § 2255 “is inadequate or ineffective to test the legality of his detention,” 28 U.S.C. § 2255(e), it is denied as futile.

ORDER

Based on the foregoing, and on all of the files, records, and proceedings herein, the Court ADOPTS the R&R [ECF No. 5]. Accordingly, IT IS HEREBY ORDERED THAT:

1. Petitioner’s motion to supplement [ECF No. 2] is GRANTED.
2. Petitioner’s 28 U.S.C. § 2241 petition [ECF No. 1], as supplemented by ECF No. 2, is DISMISSED WITHOUT PREJUDICE for lack of jurisdiction.
3. Petitioner’s application to proceed in forma pauperis [ECF No. 3] is DENIED.
4. Petitioner’s motion to appoint counsel [ECF No. 4] is DENIED.
5. Petitioner’s second motion to supplement [ECF No. 6] is DENIED as futile.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: June 20, 2017

s/Patrick J. Schiltz

Patrick J. Schiltz

United States District Judge